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CENTER FOR ADVANCED PUBLIC AWARENESS

**ENDORSED**  
Superior Court of California  
County of San Francisco

MAR 22 2013

CLERK OF THE COURT  
BY: DAVID W. YUEN  
Deputy Clerk

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 COUNTY OF SAN FRANCISCO  
9 UNLIMITED CIVIL JURISDICTION

10  
11 CENTER FOR ADVANCED PUBLIC  
12 AWARENESS,  
Plaintiff,

13 v.

14 JOKARI/US, INC.; and DOES 1-30, inclusive,  
15 Defendants.  
16

**CGC-19-574722**

Case No.

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

Violation of Proposition 65, The Safe  
Drinking Water and Toxic Enforcement Act  
of 1986 (Health & Safety Code § 25249.5 *et*  
*seq.*)

Action is an Unlimited Civil Case



1 Plaintiff CENTER FOR ADVANCED PUBLIC AWARENESS, acting in the public  
2 interest, alleges a cause of action against Defendants JOKARI/US, INC., and DOES 1-30.

3 **INTRODUCTION AND NATURE OF THE ACTION**

4 1. This Complaint is a representative action brought by plaintiff CAPA in the public  
5 interest of the citizens of the State of California to enforce the People's right to be informed of the  
6 health hazards caused by exposures to di(2-ethylhexyl)phthalate (DEHP) and Diisononyl phthalate  
7 ("DINP"), toxic chemicals found in and on the organizers with vinyl/PVC components sold by  
8 defendants in the State of California.

9 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to warn  
10 individuals not covered by California's Occupational Safety Health Act, Labor Code § 6300 *et seq.*  
11 ("consumers") that they are being exposed to substances known to the State of California to cause  
12 cancer, birth defects and other reproductive harm through exposures to DEHP and DINP, present in  
13 and on organizers with vinyl/PVC components that are manufactured, distributed, imported,  
14 marketed, sold and otherwise offered for sale or use throughout the State of California by  
15 defendants and purchased, used or handled by consumers.

16 3. Detectable levels of DEHP and DINP are found in and on the organizers with  
17 vinyl/PVC components that defendants manufacture, distribute, import, market, sell and offer for  
18 sale to consumers and other individuals throughout the State of California.

19 4. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, codified  
20 at Health and Safety Code § 25249.6 *et seq.* ("Proposition 65"), it is unlawful for a person in the  
21 course of doing business to knowingly and intentionally expose consumers in California to  
22 chemicals known to the State to cause cancer, birth defects or other reproductive harm, without first  
23 providing a "clear and reasonable" health hazard warning to such individuals prior to purchase or  
24 use.

25 5. CAPA contends and alleges that Defendants manufacture, distribute, import, sell,  
26 and offer for sale, organizers with vinyl/PVC components, such as the *Jokari/US Gift Bag*  
27 *Organizer, Model #06427, UPC #0 32368 06427 1* (hereinafter, the "PRODUCTS"), containing  
28



1 DEHP and DINP without the requisite health hazard warning regarding the harms associated with  
2 exposures to the chemicals, in violation of Proposition 65. Defendants' conduct subjects them to  
3 civil penalties for each violation, as well an enjoinder and preliminary and permanent injunctive  
4 relief. Health & Safety Code §§ 25249.7(a) and (b).

5 **PARTIES**

6 6. Plaintiff CAPA is a non-profit organization organized under the laws of California  
7 and acting in the interest of the general public, dedicated to protecting the health of California  
8 citizens and the environment through the elimination or reduction of toxic chemicals utilized in  
9 manufacturing consumer products and increasing public awareness of those chemicals through the  
10 promotion of sound environmental practices and corporate responsibility. CAPA is a person, within  
11 the meaning of Health & Safety Code § 25249.11(a), and CAPA brings this action in the public  
12 interest pursuant to Health and Safety Code § 25249.7(d).

13 7. Defendant JOKARI/US, INC. ("JOKARI") is a private company located in Texas,  
14 supplying consumer products and doing business within the State of California at all relevant times  
15 herein.

16 8. Plaintiff is informed, believes and thereon alleges that, at all relevant times,  
17 Defendant JOKARI was and is a person in the course of doing business, with ten (10) or more  
18 employees, within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

19 9. JOKARI manufactures, imports, distributes, sells, and/or offers the PRODUCTS for  
20 sale or use in the State of California, or implies by its conduct that it manufactures, imports,  
21 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

22 10. Defendants DOES 1-10 ("MANUFACTURER DEFENDANTS") are each a person  
23 in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and  
24 25249.11. MANUFACTURER DEFENDANTS, and each of them, assemble, fabricate, and  
25 manufacture, or each implies by its conduct that it does such, one or more of the PRODUCTS  
26 offered for sale or use in California.



11. Defendants DOES 11-20 (“DISTRIBUTOR DEFENDANTS”) are each a person in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11. DISTRIBUTOR DEFENDANTS, and each of them, distribute, transfer, and transport, or each impliedly does so by its conduct, one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use in the State of California

12. Defendants DOES 21-30 (“RETAILER DEFENDANTS”) are each a person in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to individuals in the State of California.

13. At this time, the true names of defendants DOES 1 through 30, inclusive, are unknown to plaintiff, who, therefore, sues said defendants by their fictitious names, pursuant to Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named defendant is responsible in some manner for the acts and occurrences alleged herein and the damages caused thereby. When ascertained, their true names and capacities shall be reflected in an amended complaint.

14. At all times mentioned herein, JOKARI, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, hereinafter, where appropriate, be referred to collectively as the “DEFENDANTS.”

## **JURISDICTION AND VENUE**

15. This Court has jurisdiction over this action pursuant to Cal. Health & Safety Code § 25249.7, allowing enforcement by any court of competent jurisdiction. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, section 10, which grants the Superior Court “original jurisdiction in all causes except those given by statute to other trial courts.” The statute under which this action is brought does not specify any other basis of subject matter jurisdiction.

16. The California Superior Court has jurisdiction over DEFENDANTS based on plaintiff's information and good faith belief that DEFENDANTS are each a person, firm,



1 corporation or association that is a citizen of the State of California, does sufficient business in  
2 California, have sufficient minimum contacts in California, and/or otherwise purposefully and  
3 intentionally avail themselves of the California market through their manufacture, importation,  
4 distribution, promotion, marketing or sale of PRODUCTS within the State. DEFENDANTS’  
5 purposeful availment renders the exercise of personal jurisdiction by California courts consistent  
6 with traditional notions of fair play and substantial justice.

7 17. Venue is proper in the Superior Court for the County of San Francisco pursuant to  
8 Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent  
9 jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because one or more  
10 instances of wrongful conduct occurred, and continue to occur, in this county, and/or because  
11 DEFENDANTS conducted, and continue to conduct, business in the County of San Francisco with  
12 respect to the PRODUCTS that are the subject of this action.

### 13 **REGULATORY BACKGROUND AND LAW**

14 18. In 1986, the people of the State of California approved an initiative addressing  
15 concerns regarding the harms caused by hazardous chemicals and declaring their right “[t]o be  
16 informed about exposures the chemicals that cause cancer, birth defects, or other reproductive  
17 harm.” Ballot Pamp., Proposed General Law, Gen. Elec. (Nov. 4, 1986) at p.3.

18 19. Formally known as the Safe Drinking Water and Toxic Enforcement Act of 1986  
19 and codified at Health & Safety Code §§ 25249.6 *et seq.*, Proposition 65 states in relevant part that  
20 “[n]o person in the course of doing business shall knowingly and intentionally expose any  
21 individual to a chemical know to cause cancer or reproductive toxicity without first giving a clear  
22 and reasonable warning to such individual...”

23 20. Under the Act, a “person the course of doing business” is defined as a business with  
24 ten (10) or more employees. Health & Safety Code § 25249.11(b). Businesses are prohibited from  
25 exposing individuals to hazardous chemicals without first giving a “clear and reasonable” health  
26 hazard warning. Health & Safety Code § 25249.6



21. An exposure to a hazardous chemical is defined as one that “results from a person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a product...” 27 C.C.R. § 25600(h).

22. Proposition 65 provides that persons violating the statute may be enjoined in any court of competent jurisdiction and may be subject to civil penalties of up to \$2,500 per day per violation. Health & Safety Code § 25249.7.

23. On October 24, 2003, pursuant to Proposition 65, California identified and listed DEHP as a chemical known to cause cancer, birth defects, and reproductive harm. DEHP became subject to the “clear and reasonable warning” requirements one year later, on October 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8, 25249.10(b). On December 20, 2013, California identified and listed DINP as a chemical known to cause cancer. DINP became subject to the “clear and reasonable” warning requirement on December 20, 2014. *Id.*; *Id.*

## **STATEMENT OF FACTS**

24. Plaintiff purchased, investigated and tested DEFENDANTS' PRODUCTS at an accredited lab, and, after consultation with a person with relevant and appropriate expertise who reviewed the collected data and analyzed the risk of exposures to DEHP and DINP, determined the PRODUCTS exposure consumers in California to listed chemicals at levels that require a warning under the statute, based on consumers touching, handling or otherwise utilizing the PRODUCTS in accordance with their reasonably foreseeable usage.

25. Plaintiff purchased the PRODUCT, without a warning, in California.

26. DEFENDANT is a person in the course of doing business.

27. Based on the foregoing, Plaintiff's attorney executed a certificate of merit, attesting there was a reasonable and meritorious case for this private action, and included the factual information supporting the certificate when it served the notice on the California Attorney General's Office, as required. Health & Safety Code § 25249.7(d); Title 11 C.C.R. § 3102.

28. Thereafter, on August 29, 2018, plaintiff served a 60-Day Notice of Violation (“Notice”), together with the requisite certificate of merit, on JOKARI, the California Attorney



1 General's Office, and the requisite public enforcement agencies, alleging that, as a result of  
2 DEFENDANTS' sales of the PRODUCTS, consumers in the State of California were and are being  
3 exposed to DEHP and DINP resulting from their reasonably foreseeable use of the PRODUCTS  
4 without first receiving a "clear and reasonable warning", as required by Proposition 65.

5 29. After receiving plaintiff's Notice, no public enforcement agency has commenced  
6 and is diligently prosecuted a cause of action against DEFENDANTS under Proposition 65 to  
7 enforce the alleged violations that are the subject of the Notice.

8 **FIRST CAUSE OF ACTION**

9 **(Violation of Proposition 65 - Against All Defendants)**

10 30. CAPA realleges and incorporates by reference, as if fully stated herein, the  
11 allegations set forth in Paragraphs 1 through 29, inclusive.

12 31. DEFENDANTS' PRODUCTS contain DEHP and DINP in levels that require a  
13 clear and reasonable warning under Proposition 65.

14 32. DEFENDANTS knew or should have known that the PRODUCTS they  
15 manufacture, import, distribute, sell, and offer for sale in California contain DEHP and DINP.  
16 DEFENDANTS were also informed of the presence of DEHP and DINP in the PRODUCTS  
17 through Plaintiff's Notice.

18 33. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
19 offer for sale or use in California cause exposures to DEHP and DINP as a result of the reasonably  
20 foreseeable use of the PRODUCTS, through dermal contact and/or ingestion.

21 34. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
22 continues to cause, consumer product exposures to DEHP and DINP.

23 35. DEFENDANTS know that the normal and reasonably foreseeable use of the  
24 PRODUCTS exposes individuals to DEHP and DINP through dermal contact and/or ingestion.

25 36. DEFENDANTS intend that exposures to DEHP and DINP from the reasonably  
26 foreseeable use of the PRODUCTS will occur by their deliberate, non-accidental participation in  
27 the California marketplace.  
28



37. The consumer exposures to DEHP and DINP, caused by DEFENDANTS and endured by consumers and other individuals in California are not exempt from the “clear and reasonable” warning requirements of Proposition 65.

38. DEFENDANTS failed to provide a “clear and reasonable warning” to those consumers in California who have been, or who will be, exposed to DEHP and DINP through dermal contact and/or ingestion resulting from their use of the PRODUCTS.

39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted directly by California voters, consumers exposed to DEHP and DINP through dermal contact and/or ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold without a “clear and reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

40. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS' violations have continued beyond their receipt of plaintiff's Notice. As such, DEFENDANTS' violations are ongoing and continuous in nature and, unless enjoined will continue in the future.

41. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-described acts, DEFENDANTS, and each of them, are liable for a maximum civil penalty of \$2,500 per day for each violation.

42. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

## PRAYER FOR RELIEF

Wherefore, CAPA prays for relief and judgment against DEFENDANTS, and each of them,  
as follows:

1. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, importing, marketing or otherwise offering the PRODUCTS for sale or use in California without first providing a “clear and reasonable warning” regarding the harms associated with exposures to DEHP and DINP;



1           2.       That the Court, pursuant to Health and Safety Code § 25249.7(a), issue preliminary  
2 and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS currently in the  
3 chain of commerce in California without a “clear and reasonable warning”;

4           3.       That the Court, assess civil penalties against DEFENDANTS, and each of them, in  
5 the amount of \$2,500 per day for each violation of Proposition 65, in an amount to be determined at  
6 trial;

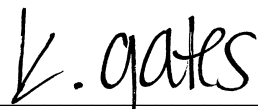
7           4.       That the Court award plaintiff its reasonable attorneys’ fees and costs of suit,  
8 incurred herein; and

9           5.       That the Court grant any further relief as the Court may deem just and equitable.

10  
11  
12 Dated: March 21, 2019

Respectfully submitted,

GATES JOHNSON LAW

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17 By:   
18       Kimberly Gates Johnson  
19       Attorneys for Plaintiff  
20       Center for Advanced Public Awareness  
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